

REMARKS

Claims 35-47 are pending. Claims 35 and 47 are currently amended. Claims 1-34 were previously cancelled without prejudice. No new matter has been added.

Independent claims 35 and 47 are currently amended to more particularly point that the device has "at least one marking effector located at the distal end of the elongate shaft for creating a position marker to indicate treated tissue." Support for these amendments is found, *inter alia*, at pages 13, 16, and 17 of the specification as filed.

No new matter has been added by these amendments.

Rejections under 35 U.S.C. § 102(e)

Claims 35-47 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,264,650 to Hovda et al. ("Hovda"). Applicants traverse these rejections.

Hovda describes a device for electrosurgical treatment of an intervertebral disc. The device has a plurality of electrodes capable of applying electrical energy to a target location to ablate or stiffen tissue.

Independent claims 35 and 47 recite a device having "at least one marking effector located at the distal end of the elongate shaft for creating a position marker to indicate treated tissue." Hovda does not disclose an "effector...for creating a position marker," nor does Hovda contain any disclosure relating to the marking of treated tissue. Thus, Hovda fails to disclose each and every element of claims 35 and 47. The rejections of independent claims 35 and 47, along with the rejections dependent claims 36-46, should therefore be withdrawn.

CONCLUSION

It is believed that claims 35-47 are in condition for allowance.

A two-month extension fee of \$450 is believed due for this response. Please charge this fee, and any additional fee(s) are due, to Jones Day Deposit Account No. 503013

Respectfully submitted,

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